

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:11-cv-257-RJC

JAMIE LEE CLYBURN,

Plaintiff,

v.

DR. JOHN MORGAN;  
SID HARKLEROAD; DR. KEITH  
KUHNE; M. HAYWARD;  
MS. BUCHANAN; DR. KEVIN ROBERT  
CHUNG; and MS. MEDFORD,

Defendants.

**ORDER**

**THIS MATTER** comes before the Court on Plaintiff's Motion for Voluntary Dismissal.  
(Doc. No. 7).

In his Complaint, Plaintiff contends that defendants Doctors John Morgan, Keith Kuhne, and Kevin Robert Chung, Nurses Buchanan, Medford and Hayward and Superintendent Sid Harkleroad have been deliberately indifferent to his serious medical needs. (Doc. No. 1). Plaintiff alleges that the defendants refused to provide him with the genital wart treatment he requested and that as a result, he has suffered from itching and irritation and he fears that his genital warts may turn into Human Papillomavirus (HPV). (Id. at 2).

On October 5, 2011, Plaintiff sent a letter to the Clerk of Court (the "Clerk") asking that his case be dismissed because he cannot afford the filing fee. (Doc. No. 3). The Clerk returned the letter to Plaintiff, explaining that because Plaintiff has more than one case pending and Plaintiff did not reference a case number in his letter, the Clerk could not determine which case Plaintiff sought to have dismissed. (Doc. No. 3-1). The Clerk directed Plaintiff to return the

document within twenty (20) days, indicating the case number Plaintiff sought to dismiss. (Id.).

On October 25, 2011, Plaintiff filed a letter complaining that he did not have the money to pay the filing fee for this case, and requesting that it be dismissed. (Doc. No. 4). On October 27, 2011, the Clerk of Court entered an Order waiving the payment of an initial partial filing fee but stating that Plaintiff is still liable for the full filing fee. (Doc. No. 5). The Clerk directed the correctional facility at which Plaintiff resides to withhold 20% of the deposits made into Plaintiff's trust account until he has paid the \$350.00 filing fee.

In response to Plaintiff's October 25, 2011 letter, the Clerk sent Plaintiff a letter on October 28, 2011, explaining how the filing fee works in prisoner civil rights cases. (Doc. No. 6). In the letter, the Clerk concluded that Plaintiff could either move to dismiss his case, or ask the Court review the merits of his Complaint, but in either event, he would be required to pay the filing fee in installments when there was money in his trust account pursuant to 28 U.S.C. § 1915(a). The Clerk directed Plaintiff to advise the Court whether he still wished to voluntarily dismiss his case within ten (10) days of receipt of the letter. (Id.). On November 8, 2011, Petitioner filed a motion stating that he would like to voluntarily dismiss his case. (Doc. No. 7).<sup>1</sup>

Rule 41 of the Federal Rules of Civil Procedure allows a plaintiff to voluntarily dismiss his Complaint without a court order before the opposing party serves an answer or dispositive motion. FED. R. CIV. P. 41(a)(1)(A). In the instant case, Defendants have not yet been served with the Complaint and no answer or dispositive motion has been filed. Therefore, Plaintiff's Motion to Dismiss is granted.


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<sup>1</sup> In his letter, Plaintiff also make threats directed at Frank Johns, Clerk of Court. Plaintiff is advised that the Court takes any threat very seriously and has forwarded a copy of his letter to the United States Marshal. Plaintiff shall not make any further threats against Mr. Johns or any other Court personnel in his communication with the Court.

**IT IS, THEREFORE, ORDERED** that:

- (1) Plaintiff's Motion to Dismiss, (Doc. No. 7), is **GRANTED** and Plaintiff's Complaint is **DISMISSED without prejudice**;
- (3) The Court's previous Order Waiving the Initial Filing Fee and Directing Monthly Payments, (Doc No. 5), remains in place; and
- (4) The Clerk is directed to send a copy of this Order to the pro se Plaintiff.

Signed: November 29, 2011

  
Robert J. Conrad, Jr.  
Chief United States District Judge

